Supreme Court, U. S.
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Supreme Court of the United States

October Term, 1976

No. 76-900

ERIE LACKAWANNA RAILWAY COMPANY,
Petitioner,

vs.

L. F. COLE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OBJECTION TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF THE NATIONAL RAILWAY LABOR CONFERENCE

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Respondent objects to the Motion for Leave to File Brief Amicus Curiae by The National Railway Labor Conference (NRLC) and withheld its consent to the filing of said Brief for the following reasons:

I. RULES OF THIS COURT

A. Rule 42 (3)

Rule 42 (3) of this Court provides in part, as follows:

". . . It shall concisely state the nature of the applicant's interest, set forth facts or questions of law that have not been, or reasons for believing that they will

not adequately be, presented by the parties, and their relevancy to the disposition of the case; and it shall in no event exceed five printed pages in length. . . ."

Respondent submits that "It" refers to a Motion for Leave to File.

B. Contents of the Motion.

There are no facts set out in this Motion. There are no questions of law set out in this Motion that the NRLC alleges have not been or will not adequately be presented by the parties. The NRLC in its Motion mentions Section 3, First (j) of the Railway Labor Act (45 U. S. C., Sec. 153), but does not state that the law concerning this section has not been and will not adequately be presented by the parties. It is submitted that NRLC could not allege that the questions of law surrounding Section 3, First (j) of the Railway Labor Act have not been or will not adequately be presented by the parties since this matter has been thoroughly presented to the lower courts time and time again in the form of memorandums and briefs during the course of this case. For the above reasons, the Motion should be overruled.

C. Length of Motion.

The Motion should be overruled and not be considered because the document filed herein exceeds five printed pages in length, contrary to Rule 42 (3) of this Court. The format of the document, i.e., part of it being a Motion of two pages and part of it being a Brief of twenty-four pages, when the Brief contains items that belong in the Motion, cannot avoid the application of Rule 42 (3). Nor should this Court assume that the Brief attached

to the Motion is incorporated into the Motion, since this also would void the intent of Rule 42 (3). If this procedure is allowed by this Court, there is no reason for the Motion, as the Brief itself is already before the Court. From a reading of the Rule, it appears to Respondent that NRLC should file a Motion not exceeding five printed pages in length covering the matters set out in Rule 42 (3). Then, if the Motion is granted, the Brief should be filed.

II. NATURE OF NRLC'S INTEREST

The NRLC, in fulfillment of a reason for its existence, desires to be an *amicus curiae* in this case primarily to help the Erie, who is probably one of its members. In order to help the Erie, the NRLC desires the opportunity as *amicus curiae* to attack the lower courts' decisions in two elementary basic ways, namely, (1) to change the law, or (2) to change the facts. Also, in its attempt to help the Erie by changing the law, the NRLC has the desire and hope to help all of its member railroads by having this Court further reduce the rights of an employee in cases such as this. This is the nature of the NRLC's interest in this case and it is not sufficient for this Court to grant its Motion to file a Brief *amicus curiae* herein.

III. THE LAW

The NRLC in its Brief attempts to raise questions of law that it believes have not been or will not adequately be presented by the parties. The NRLC devotes the first fourteen (14) pages in its Brief to a discussion of The Railway Labor Act and The Proceedings Below. These historical recitations, by their very nature, reveal

no question of law that has not been and will not adequately be presented by the parties. The Interest of Amicus Curiae, page 14, does not discuss the law. Under Reasons For Granting The Writ, pages 15 through 24, the NRLC merely elaborates and further discusses those questions of law presented by the Petition for Writ of Certiorari. The discussion therein pertaining to the relationship between a union and an employee has nothing to do with the law in the case before this Court.

The law in this case is settled; it does not conflict with applicable decisions of this Court or another court of appeals; it was understood and properly applied by the lower courts; it should be changed by Congress, if any changes are to be made; and it is not an important question of federal law when compared with other cases this Court is asked to review. This case is legally narrow in its concept and does not present difficult, complex and important questions of federal law, that affect the lives of millions of people and relates to the vitality and future course of our nation, which it is the custom of this Court to decide.

On the law, the Motion should be denied.

IV. FACTS AND EVIDENCE

In its Brief the NRLC extensively discusses the evidence and facts in this case and argues that based upon its version and interpretation of the evidence the factual determinations made below were incorrect. This type of argument has no place in an appeal to this Court, and this Court should not grant the Motion so that it may review or weigh the evidence as advocated by the NRLC. In 32 AM. JUR. 2d, *Federal Practice and Procedure*, Section 308, page 784, it is stated: (Footnotes omitted)

"§ 308. Questions of law and fact.

The general principle that appellate review is ordinarily limited to a determination whether there has been error of law, the trial court's decision of questions of fact being taken as conclusive in most circumstances, is applicable to review by the Supreme Court. Thus, on appeal to the Supreme Court, the review is generally confined to matters of law shown by the record. The Court will not pass on the sufficiency of the evidence in the absence of glaring error, nor enter into a consideration of assigned errors below in dealing with matters of fact, but it accepts the verdict of the jury or the findings and conclusions of the court on conflicting facts as conclusive."

Although the NRLC argues and discusses the evidence and facts at great length, it does not set out any facts that have not been and will not adequately be presented by the parties. Neither does the NRLC allege any reasons for it to believe that any facts will not be presented by the parties.

V. SUMMARY

As to the document filed with this Court. If the Brief is incorporated into the Motion, then the Motion exceeds five printed pages in length, contrary to Rule 42 (3). If the Brief is not incorporated into the Motion, then the Motion does not concisely state those matters set out in Rule 42 (3), which rule requires "It shall concisely state . . ." such matters. In either case, the Motion of the NRLC should be denied.

The Motion and Brief of the NRLC does not set forth any facts or questions of law that the NRLC alleges have

not been presented by the parties. Neither does the NRLC give any reasons for believing that any facts or questions of law will not be adequately presented by the parties. All the facts and questions of law in this case have been and will be adequately presented by the parties. See Rule 42 (3). Since this is true, the Motion of the NRLC should be overruled.

CONCLUSION

The Motion for Leave to File Brief Amicus Curiae of The National Railway Labor Conference should be denied and its Brief as Amicus Curiae not considered by this Court. Further the Petition for Writ of Certiorari herein should be denied.

Respectfully submitted,

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